Supreme Court, U.S.
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No. 09-1579

IN THE
Supreme Court of the United States

October Term 2010

Napoleon Spear,

Petitioner,

v.

General Motors Corporation a/k/a
General Motors Company

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of Maryland

REPLY BRIEF

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QUESTIONS PRESENTED

This petition raises important issues concerning the following Federal questions to wit:

1. Did the Maryland Court of Appeals and the Maryland Special Court of Appeals violated the due process clauses of under the 5th, and 14th, amendments to the United States Constitution when they affirmed the Circuit Court for Baltimore City by finding that the Circuit Court erred in dismissing Petitioner's case in that Court, yet instead of reversing such error, affirmed the Circuit Court for a reason that was stated in the transcript of the proceeding and not for what the Circuit Court actually rule upon in its final order?

2. May a State Supreme Court or a State Court of Appeals affirm a lower State trial Court on any ground not stated in the final order or on any ground not appealed by the parties and where an appellant had no reasonable opportunity to appeal or address such ground in the State Appellate Court in clear violation of an appellant rights to due process under both the 5th, and 14th, amendments to the United States Constitution?

LIST OF THE PARTIES TO THE PROCEEDINGS

Mr. Napoleon Spear is the petitioner in this case and he is proceeding in this matter pro se as a matter of right. Petitioner is a former employee of the Respondent. The Respondent in this matter is General Motors Corporation and both of the parties named herein are subject to the jurisdiction of this Supreme Court as a matter of law.

TABLE OF AUTHORITIES

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I. INTRODUCTION

The Petitioner sustained serious head injuries on the job while working for GMC. Petitioner also completed many physical examinations, passes most of them in order for him to return to GMC but still ran into obstacle with his employment with GMC. The Petitioner has spent many nights at BWI and the psychological affect on him as taken its toll on him. There is also the legal side that has affected Petitioner's life and has cost him time and money to redress his claims. The Petitioner has spent many years as a dedicated employee of Respondent and Respondent has turned its back on the Petitioner.

On October 22nd, 2007, the Petitioner's civil trial started in the Circuit Court for Baltimore City for a straight four days and on the fifth day of said trial the Respondent General Motors Corporation's (herein referred as GMC), lawyers approached Petitioner's lawyer with a settlement with a full acknowledgment of full and total responsibility of all Petitioner's injuries. The Petitioner's lawyer and some of Petitioner family members tried to convince Petitioner to accept the GMC settlement. The Petitioner later agreed to the settlement with the understanding that Petitioner would be paid 100% of total disability by Respondent, GMC. The Circuit Court for Baltimore City later remanded the case back to the Maryland Worker Compensation Commission for a final determination of the settlement stated in the consent order by the parties. However, contrary to the consent order and the settlement understanding by the parties, the Maryland Worker Compensation Commission erred in its final determination.

The Petitioner appealed on April 21st, 2008 again to Circuit Court for Baltimore City from the final determination of the Maryland Worker Compensation Commission.

On May 19th, 2008, Respondent, GMC moved the Circuit Court for Baltimore City for dismissal of Petitioner's de nova appeal on the ground that the appeal was untimely. On August 1st, 2008 the Circuit Court dismissed Petitioner's de novo appeal on this ground along. See, Pet. App. at 2-10.

On September 3rd, 2008, Petitioner timely appealed the Circuit Court's dismissal to the Special Court of Appeals of Maryland, arguing that the Circuit Court erred in dismissing Petitioner's case as untimely, when in fact Petitioner's de novo appeal was timely. Respondent, GMC later filed its brief conceding that Petitioner was correct, but asked the Special Court of Appeals to affirm the Circuit Court for another reason to which the Petitioner had no due process notice of a final judgment which covers all issues in the case.[1]

On November 5th, 2009, the Special Court of Appeals of Maryland instead of reversing the Circuit Court for the error in dismissing Petitioner's de novo appeal before that Court, the Special Court of Appeals erroneously affirmed the Circuit Court for Baltimore City on a ground for what was stated in the transcript of the final hearing before the Circuit Court Judge and not for what was actually rule upon by the Circuit Court. See, Pet. App. at 2-12.

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[1] GMC filed its brief in the Special Court of Appeal asking it to affirm the Circuit Co urt for any reason.

Due to the erroneous action by the Special Court of Appeals of Maryland in affirming the Circuit Court for Baltimore City, the Petitioner petition the Maryland Court of Appeals for certiorari arguing that the action by the Special Court of Appeals of Maryland affirming the Circuit Court for Baltimore City for the reason stated in a transcript and not in a final order violates Petitioner's rights to due process notice of a final judgment as to all issues in a civil case. On March 3rd, 2010, the Maryland Court of Appeals denied Petitioner's petition for certiorari in that Court. See, Pet. App. at 2-10.

Finally, Respondent's response brief to Petitioner's petition for certiorari simply requested the Maryland Court of Appeals to deny Petitioner's petition based upon its assertions that Petitioner had received all that he could receive concerning his worker compensation claims in the Circuit Court. The questions presented in this petition, is not whether Petitioner received all that Petitioner is legally entitled to receive, but whether the Special Court of Appeals of Maryland and the Maryland Court of Appeals both violated the Federal Constitution under 5th and 14th Amendments.

II. DISCUSSION

In *Betts* v. *Brady*, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1954), this Court asserted that the denial of due process is to be tested by an appraisal of the totality of facts given in a case. That which constitute a denial of fundamental fairness and shocking to the universal sense of justice may, in other circumstances and in the light of other considerations which fall short of such denial. See, 316 U.S., at 462, 62 S.Ct., at 1256, 86 L.Ed. 1595.

Under both the Fifth and Fourteenth Amendments to the U.S. Constitution, neither the federal government nor state governments may deprive any person *"of life, liberty, or property without due process of law."* A similar due process provision was found in the Magna Charta, as well as early state constitutions. Chief Justice William Howard Taft explained the purpose behind the clauses in *Truax* v. *Corrigan* 257 U.S. 317 (1921) as follows:

> "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property, which the Congress or the Legislature may not withhold."

Courts have therefore interpreted the due process clauses as providing two distinct limitations on government. First, the clauses provide for procedural due process, which requires the government to follow certain procedures before it deprives a person of life, liberty, or property. Cases that address procedural due process usually focus on the type of notice that is required of the government or the type of hearing that must be held when the government takes a particular action. Second, the clauses establish substantive due process, under which courts determine whether the government has sufficient justification for its actions. Because courts use substantive due process to protect certain fundamental rights of U.S. citizens, issues related to substantive due process have been the subject of extensive debate.

The Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law . . . ."

In numerous decisions, this Court *"has held that the Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws." e.g., Hampton v. Mow Sun Wong,* 426 U.S. 88, 100, 96 S.Ct. 1895, 1903, 48 L.Ed.2d 495 (1976); *Buckley v. Valeo,* 424 U.S. 1, 93, 96 S.Ct. 612, 670, 46 L.Ed.2d 659 (1976); *Weinberger v. Wiesenfeld,* 420 U.S. 636, 638 n. 2, 95 S.Ct. 1225, 1228, 43 L.Ed.2d 514 (1975); *Bolling v. Sharpe,* 347 U.S. 497, 500, 74 S.Ct. 693, 694, 98 L.Ed. 884 (1954). *Vance v. Bradley,* 440 U.S. 93, 95 n. 1, 99 S.Ct. 939, 942, 59 L.Ed.2d 171 (1979).

"To withstand scrutiny under the equal protection component of the Fifth Amendment's Due Process Clause, 'classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." See, *Craig v. Boren*, 429 U.S. 190, 197, 97 S.Ct. 451, 456, 50 L.Ed.2d 397 (1976); *Califano v. Webster*, 430 U.S. 313, 316-317, 97 S.Ct. 1192, 1194, 51 L.Ed.2d 360 (1977).[2]

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[2] The State Appellate Courts of this country properly share the responsibility for protecting the constitutional rights of those of disable persons such as the Petitioner in this case. Thus, when a party's rights are wrongfully destroyed, the state Courts must ensure that a party has no less than any other person. The Constitution, as well as human decency, requires no less. The issue in these cases, however, does not concern whether a party may recover damages for deprivation of rights. Rather, these cases decide the appropriate source of the constitutional right and the remedy that corresponds with it.

VII. ARGUMENT

The Respondent have now conceded through its wavier to respond to Petitioner's petition for certiorari as it did in the State Courts before the Maryland Special Court of Appeals that the Circuit Court for Baltimore City erred when it dismissed Petitioner's de novo appeal from the Maryland Worker's Compensation Commission.

The Respondent's filed wavier with this Court should clearly support all facts and arguments stated in Petitioner's petition. The Petitioner hereby moves this Court to adopt the facts and arguments stated in the Petitioner's petition for certiorari as true and correct due to the Respondent's waiver.

August 1st, 2008, without due process notice to the Petitioner, the Circuit Court held a hearing and dismissed Petitioner's petition for judicial review. See, Pet. Appx. at 5. Instead of reversing the Circuit Court for dismissing the case as untimely, the Special Court of Appeals erroneously affirmed the Circuit Court for what the Circuit Court stated in the transcript and not for what was actually ruled upon by the Circuit Court in its final order.

The real issue in this petition is whether the Special Court of Appeals violated the Fifth and the Fourteenth Amendment to the United States Constitution when the Special Court of Appeals erroneously affirmed the Circuit Court for a reason stated in the transcript contrary to what the Circuit Court decided in its final order of dismissal of Petitioner's case. This was at the appellate stage.

The Petitioner raises these important due process concerns under the Fifth and the Fourteenth Amendment to the United States Constitution. See, *Mapp* v. *Ohio*, 367 U.S. 643, 654-55 (1961).

The substantive element of the Due Process Clause protects certain rights not expressly mentioned in the Constitution, such as the right to prevent the State Courts from infringement upon the rights of the party to have a fair and final hearing. With that right, comes with the right to receive notice of a final order and the right to an appeal. See *Planned Parenthood* v. *Casey*, 505 U.S. 833, 847-49, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). In this case, the Special Court of Appeals affirmed the trial Court on a ground to which the Petitioner had no notice and this violates Petitioner's due process rights to notice. See, *Parratt* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).

A. *Wavier Supports Petitioner's Claims*

The Respondent, General Motors Company's wavier to respond to Petitioner's claims in his petition for certiorari should clearly indicate that this Court has jurisdiction to hear this matter and that the constitutional violations stated herein accrued at the appellate stage of these proceedings.

The Special Court of Appeals of Maryland clearly violated the 5th, and 14th, Amendments to the United States Constitution when it denied the Petitioner the right to due process notice in this matter. The Petitioner had no remedy other than to petition for certiorari in the Maryland Court of Appeals which is the highest Court of that State. See, 28 U.S.C. § 1257(a).

In the lower State trial Court, the Petitioner appeared at the final hearing before Circuit Court for Baltimore City. The Petitioner never received a final order as to all issues in the case.

The Special Court of Appeals of Maryland affirmed the Circuit Court for what was stated in the transcript of the final hearing and not for what was actually ruled upon by the Circuit Court in the final order of that Court. This violates the Due Process Clauses of the Constitution of the United States because Special Court of Appeals' opinion denies Petitioner of his right to properly appeal all issue in the case. The Special Court of Appeals of Maryland clearly erred when it affirmed the Circuit Court for the reason for what was stated in transcript and not for what the Circuit Court. The Petitioner was never given the right at the appellate stage to address his constitutional claims in the highest Court of the State pursuant to 28 U.S.C. § 1257(a).

The Petitioner could not appeal the issue that Special Court of Appeals rested its opinion on because Petitioner's appeal was limited to what the Circuit Court actually decided and not for what the Circuit Court's judge stated in the transcript of the final hearing. Thus the Special Court of Appeals violated the Due Process Clauses of the Constitution of the United States because Special Court of Appeals opinion denies Petitioner of his right to properly appeal all issue in the case with notice. See, *Parratt* v. *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).

10.

The Circuit Court for Baltimore City erroneously made the wrong final determination that Petitioner's petition was untimely, when in fact, it was timely. The Circuit Court dismissed the action on this ground along. Petitioner appealed from this dismissal. The Special Court of Appeals found and the Respondent conceded that Petitioner appeal was timely. However, instead of reversing the Circuit Court, the Special Court of Appeals affirmed the trial Court on the ground for what was stated by the Circuit Court in the transcript and not for what the Circuit Court actually ruled on. This is contrary to the Federal and State Constitutions, because Petitioner was denied his right to notice of a final order which covers all issues in the case so that he could appeal all issues in the final order. Therefore, since the Circuit Court never issued a final order as to all issues, the Special Court of Appeals erred when it affirmed the Circuit Court. Petitioner was not given proper due process notice to appeal all issues in the State Court because a transcript cannot be considered a final order as a matter of law. See, *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 435-436, 102 S.Ct. 1148, 1157-1158, 71 L.Ed.2d 265 (1982) (post-deprivation remedies do not satisfy due process where deprivation is caused by established state procedures).

B. *Courts of Appeals Violated Constitution*

Secondly, the Special Court of Appeals erred when it affirmed the Circuit Court for Baltimore City on the ground for what was stated in the transcript rather then what was rule upon by the Circuit Court in its final order thereby violating the 5th, and 14th, Amendments to the United States Constitution. The Court of Appeals cited this Court holding in *Waller v. Maryland Nat'l Bank*, 332 Md. 375 at 379 (1993) stating that *("when there is a conflict between the transcript of a trial and the docket entries, the transcript, unless shown to be in error, will prevail")*.

The Maryland Court Appeals in *Waller* has never held that a transcript control over a final order of a trial Court. Thus the Special Court of Appeals has clearly misconstrued the holding in *Waller* in order to base its decision in Petitioner's appeals. Furthermore, the Special Court of Appeals violated the United States Constitution under the due process provisions by finding that Petitioner was right as to the main issue of his appeal and yet instead of reversing the lower Circuit Court, the Special Court of Appeals, affirm the Circuit Court.

This Court has held in *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 13 (1978) that:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Furthermore, the Respondent's answer filed in the Maryland Court of Appeals in response to the Petitioner's petition for certiorari seems to support Petitioner's petition for many reasons.

First, Respondent fails to address the issues presented in Petitioner's petition for certiorari. See, Pet. Cert. at p. (ii) (Questions Presented). Failure to address a properly file and timely petition means that the petition is unopposed as to the issues presented therein. Secondly, in Respondent answer to the petition for certiorari, Respondent shows that Petitioner did not receive total disability for all of his claims as agreed by the parties.

Moreover, Respondent's contradictions on appeal because the Circuit Court never ruled upon those issue and yet affirmed the Circuit Court on the issues in the case. Therefore, it was clear that the Special Court of Appeals violated Petitioner's right to due process under the State and Federal Constitutions. See, *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 435-436, 102 S.Ct. 1148, 1157-1158, 71 L.Ed.2d 265 (1982) (post-deprivation remedies do not satisfy due process where deprivation is caused by established state procedures).

In the early view of the court, a deprivation of life, liberty, or property simply meant the punishment for crime. The requirements of due process would be met by fair procedure, including notice to the defendant and an open trial with the right to counsel. In time, however, the court concluded that due process was not limited to procedural considerations but had a substantive aspect as well.

Thus, even if proper legal procedure were observed, the substantive ground on which a person was deprived of life, liberty, or property might in itself violate due process.

The constitutionality of much state legislation and Court action was opened to question, and so many laws were attacked that at times about one third of the cases before the Supreme Court dealt with due process. In early due process cases the Supreme Court did not place limitations on traditional exercises of the States' appellate process. The Fifth Amendment guarantees of due process. The Fourteenth Amendment contains virtually the same phrase, but expressly applied to the States. Therefore, those two clauses only apply against State actors and not against private citizens.

This Supreme Court has interpreted those two clauses identically, as Justice Felix Frankfurter once explained in a concurring opinion: *"To suppose that due process of law"* meant one thing in the Fifth Amendment and another in the Fourteenth is too frivolous to require elaborate rejection. See, *Malinski v. New York*, 324 U.S. 401, 415 (1945), (Frankfurter, J., concurring).

VI. REASON FOR GRANTING THE WRIT

This case presents this Court with a clear opportunity to address some due process concerns that are exceedingly important and unprecedented. These are questions of first impression, concerning constitutional law under the 5th and 14th Amendments to United States Constitution. These questions should be fully resolved by this Court and should be settled by this Court concerning the application of the 5th and 14th Amendments to the United States Constitution in the State Courts.

The Fourteenth Amendment prohibits the deprivation of liberty or property without due process of law. A due process claim is cognizable only if there is a recognized liberty or property interest at stake. See, *Board of Regents* v. *Roth*, 408 U.S. 564, 69 (1972). If the State Court acts repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or any treaty or statute in the State Court, and the State's highest Court has denied relief, Federal Law, 28 U.S.C. § 1257(a) authorized this Court to hear petitions for writ of certiorari. Prior to 1988, there was a right to mandatory appeal in cases in which a state court had found invalid a federal statute or treaty or in which a state court had upheld a state statute contested under the Constitution, a treaty, or a statute of the United States. *See* the Act of June 25, 1948, 62 Stat. 929. The distinction between *certiorari* and appeal was abolished by the Act of June 27, 1988, Pub. L. 100-352, § 3, 102 Stat. 662.

The reason for granting this petition for certiorari in this matter is because the Maryland Court of Appeals violated the due process provisions of the United States Constitution under both the Fifth and Fourteenth Amendments when it refused to address Petitioner's due process claims in his petition for certiorari to the Special Court of Appeals of Maryland. See, *Bouie* v. *City of Columbia*, 378 U.S. 347, 353-354, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964). Notwithstanding the Maryland Court of Appeals' denial of Petitioner's due process rights, Petitioner raised his constitutional challenges in the Maryland Court of Appeals, the highest Court of the State of Maryland pursuant to 28 U.S.C. § 1257(a).

Instead of addressing and reviewing the Federal Constitutional challenges made by the Petitioner before the Maryland Court of Appeals, the Maryland Court of Appeals refused to address the issues raised by the Petitioner in this petition and denied certiorari. See, Pet. App. p. 1. Due process is best defined in one word--fairness. Throughout the United States' history, its Constitution, Statutes and Case Law have all provided standards for fair treatment of citizens by federal, state and local governments. These standards are known as due process. When a person is treated unfairly by the government, including the State Courts, it is said to have deprived a person of due process of law. This case clearly fits within this Court's right to exercise jurisdiction under 28 U.S.C. § 1257(a) because the Maryland Court of Appeals denied certiorari to hear a Federal constitutional claim against the Special Court of Appeals of Maryland denying the Petitioner of due process of law when it erroneously affirmed the lower Circuit Court for Baltimore City on a ground to which Petitioner had no notice.

VI. CONCLUSION

The Petitioner has suffered through the proceedings in the State court system. This Court has the opportunity to address some important issue presented in Petitioner's petition. Petitioner is a disable person fighting for his rights to justice and this Court can remedy such in-justice done to the Petitioner in this matter. The Petitioner so move this Court to be fair and impartial in this case.

When the Petitioner later realized that the consent judgment signed by Petitioner's attorney was not the 100% settlement that was due to Petitioner for his injuries that Petitioner had sustained, Petitioner rejected the agreement and appeal. The Circuit Court judge sent Petitioner's attorney a letter instructing Petitioner's lawyer to explain the true nature of the consent judgment in detail. Instead, Petitioner's counsel was angry at Petitioner and use bad language at the Petitioner. Respondent's counsels gave the Circuit Court a proposed order settling the matter and the judge signed it. The Petitioner believed that GMC had agreed to the fact that the Petitioner was 100% totally disable and that the (100%) and not (65%) would be paid by Respondent GMC for Petitioner's totally disability. Therefore, the only issue that remained before the Worker's Compensation Commission was what percentage of the 100% total disability of the Petitioner's claims that Respondent General Motors Corporation must pay.

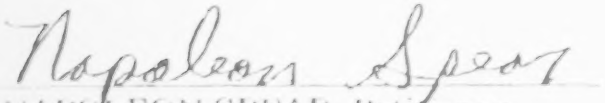
However, when the case went back to the Worker's Compensation Commission after the consent order, the Commission issued decisions contrary to the consent order.

This was the very reason why Petitioner petitioned the Circuit Court for Baltimore City for de novo review of the Worker's Compensation Commission's decisions. In conclusion, the Special Court of Appeals and the Maryland Court of Appeals both violated the United States Constitution, under both the 5th and 14th, Amendments, due process clauses. This case stems from a long history of a miscarriage of justice done against the Petitioner due to General Motors Corporation's actions during the course of Petitioner's claims before the State of Maryland's Worker Compensation Commission and before the Circuit Court for Baltimore City.

WHEREFORE, The Petitioner, Napoleon Spear hereby moves this Court to GRANT this Petition for Certiorari because of the gave denial of due process of law by both the Maryland Court of Appeals, the Special Court of Appeals of Maryland and the Circuit Court for Baltimore City. Petitioner is entitled to such relief as a matter of law.

This 24th, day of August 2010.

Respectfully Submitted,



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